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Community of Thinkers Workshop: A Summary Reflection

By: Karinya Verghese¹

I. ORGANIZATION

On November 10, 2015, immediately following the conclusion of the conference portion of *Managing Conflict 4.0: The New Wave of Opportunities for Businesses Around the Globe* (Conference), the Straus Institute for Dispute Resolution, Pepperdine University School of Law (Straus Institute), KPMG Law Germany and the Pepperdine Dispute Resolution Law Journal co-hosted the invitation-only Community of Thinkers Workshop (Workshop). The participants included corporate and public leaders, scholars and creative thinkers from all around the globe who are instrumental to the field of organizational conflict management and resolution. Also in attendance were current LL.M students of the Straus Institute and Editorial Board members of Pepperdine Dispute Resolution Law Journal, Volume XVI.

The Workshop was held at the Villa Graziadio Conference Center, Pepperdine University, Malibu, California. The concept and format of the Workshop were based in part on a September, 2014 workshop entitled “Reimagining Corporate Conflict Management” sponsored by the Straus Institute and Pepperdine’s Graziadio School of Business and Management. The Straus Institute’s Professional Skills Training and Conference Director, Lori Rushford, assisted in making both events a reality.

II. GOALS

The Workshop was designed to share insights about handling and leveraging conflict between and within organizations, with a special emphasis on transnational and cross-cultural conflict, and to suggest possible forward paths for exploration. In order to achieve this goal, the participants were invited to brainstorm and extrapolate upon some of the many “big ideas” relating to conflict management that were raised in the Conference.

1. Karinya Verghese, LL.M. in Dispute Resolution (2014), is the Straus Institute Research Fellow (2015-2016) and an Independent Commercial Mediator and Conflict Resolution Consultant.

III. PARTICIPANTS

Approximately forty individuals participated in the Workshop. As noted above, they included Conference participants and other invited guests from around the world, including senior corporate counsel, ombuds, human resources managers, conflict management experts and dispute resolution professionals who offered a broad spectrum of ideas for innovation on international conflict management. Straus LL.M. candidates and J.D. students representing countries around the globe who brought their own experiences and insights to the collaborative exercise joined them. A complete list of the participants with their respective positions and organizations has been included as an appendix to this piece.

The workshop was facilitated by Thomas J. Stipanowich, the William H. Webster Chair in Dispute Resolution and Professor of Law at the Pepperdine University School of Law, and Dr. Alexander Insam, a Partner of KPMG and KPMG Law Germany and a member of KPMG Germany's Chief Human Resources Officer (CHRO) Services leadership team, along with other individuals identified below.

IV. BIG IDEAS: THEMES FROM EARLY BRAINSTORMING

After a brief introduction, participants were given time to consider and write down on a notecard one or more "big ideas" relating to organizational conflict management that they believed would merit exploration. These might or might not be concepts that emerged from the Conference. Each participant was then given the opportunity to share their "big idea" with the other participants.

Several broad common themes emerged from this process:

- (1) The need to *redefine and rethink the current conflict paradigm*;
- (2) The *importance of organizational culture* in implementing a change in the way that conflict is handled in the workplace;
- (3) The *potential for interdisciplinary partnering and collaboration* as a means of conflict prevention, management and resolution;
- (4) The *creation and improvement of various online dispute resolution processes and tools*;
- (5) The *role of psychology and neuroscience* in conflict resolution and management; and
- (6) The *establishment of new organizations and forums* in order to increase awareness of and share resources in organizational conflict management.

The following is a summary of possible action steps associated with each of these broad themes as identified by individual participants:

Redefine and Rethink the Current Conflict Paradigm

- Rethink the way in which lawyers are compensated to incentivize settlement. Consider providing economic incentives (e.g. bonuses) for lawyers to settle.
- Start learning how to harvest ideas/results from conflict to best advantage, to create new ideas and innovation. This involves changing the attitude towards conflict resolution from largely negative to positive.
- Move away from *managing* conflict and toward *preventing* conflict.
- Promote a complete mind shift in the concept of “conflict”:

From:	To:
Obstacle	Resource
Fear	Embracing
Silence	Transparency
Destruction	Creation

- Rethink the concept of “settlement.” (Should we just settle halfway? How do we limit what is in dispute?)
- Change the language of conflict resolution from negative and limited. Positive and varied language enhances actors’ states of mind and enriches potential engineering of outcomes.
- Change the way in which mediators are compensated (e.g. contingency fee or stipulation).
- Consider: does the absence of conflict mean we’ve stopped listening?
- Use “design thinking” as a new approach to conflict management.

Importance of Organizational Culture

- Make culture the starting point to develop good dispute resolution/management practices in an organization.
- Organizations could form a “corporate dispute board” that presents periodic reports to CEO/board of directors demonstrating understanding and recognition of dispute and conflict.
- Create thought leadership around bridging “silos” within organizations.
- Create distinct corporate functions to promote broad ownership of relationship-based processes.
- Undertake an interest/risk assessment for every case/conflict (including follow up meetings/program to ensure resolution).
- Train managers to be aware of alternative dispute resolution (ADR).

- Train all levels of an organization in mediation skills. Demonstrate value for these skills by creating an award scheme (e.g. “Mediator of the Week.”)
- Train relational facilitators to move conflict management from a “blame culture” to a “group” culture.
- Provide a list of “success stories” of C-level engagement in conflict management.
- Make clear “failure-driven” culture can be of benefit because it enables innovative thinking and new solutions.

Potential for Interdisciplinary Partnering and Collaboration

- Introduce the concept of “partnering” as a means of managing and preventing conflict.
- Promote collaboration between legal and non-legal experts (e.g. Human Resources) to find the most efficient type of ADR for the relevant organizational conflict.
- Create thought leadership around bridging “silos” within organizations
- Create distinct corporate functions to promote broad ownership of relationship-based processes.

Creation and Improvement of Online Dispute Resolution Processes

- Create comprehensive online dispute resolution mechanisms and solutions.

Establishment of New Organizations/Forums

- Create a worldwide mediator pool.
- Establish an organization (such as “InnovADR,” a loose amalgam of experienced conflict management experts), which will permeate organizational culture—relational dispute resolution; complement the overall organizational strategy; and improve organizational performance and the bottom line.
- Establish regional ADR roundtables/coalitions that feed into a global roundtable to provide support on documentation, systems and marketing (as a way of pooling know-how and resources).
- Establish a “Global Roundtable for Conflict Management.”
- Establish an International Dispute Resolution Association for Executives, Entrepreneurs and Directors (“IDRAEED”).
- Create an International Speakers Bureau to promote strategies to manage conflict within organizations.

Role of Psychology/Neuroscience

- Write and train conflict management competencies (e.g. How do we institutionalize *empathy*?)
- Train the bottom-tier of the management pyramid in emotional intelligence because they are the “bottlenecks” of organizational conflicts.

- Consider why dispute resolution is not addressed and managed like a business decision; it is a similar process.
- Take advantage of the expertise of psychologists as “the best conflict managers.”
- Create a Straus Institute “*central house*” on neuroscience and law in dispute resolution.

V. FOCUSING IN: EXPLORING SIX SELECTED “BIG IDEAS”

Once all of the “big ideas” were written on the board and described, the participants were asked to vote on up to five of their favorite big ideas. The facilitators then identified the six most frequently identified big ideas (some of which were an amalgamation of multiple ideas). The facilitators then set up six workstations corresponding to each of the selected big ideas, each with an assigned group facilitator. Participants gathered at one of the six workstations (of their choosing) to discuss and explore the relevant idea and create a plan as to how that idea might be put into practice in the “real world.” After thirty minutes, participants were asked to switch to another workstation.

Each of the following sections addresses one of the six selected “Big Ideas.” A summary of the group discussion of the relevant topic is provided.

A. Big Idea #1: Establish a Global Roundtable for Conflict Management; an International Dispute Resolution Association for Executives, Entrepreneurs and Directors; and an International Speakers Bureau (Facilitator: John DeGroot)

This idea closely aligned with the international and multicultural character of the Conference and focused on the creation of three new complementary organizations as a means of addressing conflict management and resolution at a *global* level.

The group discussion suggested the grouping of a Global Roundtable for Conflict Management with an International Dispute Resolution Association for Executives, Entrepreneurs and Directors (IDRAEED) as well as an International Speakers Bureau (devoted to actively promoting strategies to manage conflict within organizations). The concept would be a single multi-functional organization with a mission along the lines of, for example, “Lessening/reducing conflict in the world” and “More resources for less conflict.” The participants agreed that the first task would be to create a platform—a website—to integrate the three organizations and provide

resources (e.g. tools, templates, and checklists) to conflict resolution professionals.

Should the proposed organization be high profile or “under the radar”? The group suggested that it would be a kind of hybrid comprised of a “public face” to provide resources to conflict resolution professionals and a private forum, a “trusted exchange” regarding conflict resolution/management issues and ideas for participating companies and other stakeholders (described as “highly-credible” individuals in the field of conflict resolution, from different countries and different disciplines (including, academics, practitioners and companies)). This would allow for a type of peer-to-peer mentoring/communication between companies, as well as the private creation of ideas, which could then migrate into the “public” section of the organization.

On a tactical and practical level, participants envisaged that the organization would offer an apprenticeship program for students (such as those from the Straus Institute) and, using the World Economic Forum analog, would host a large annual capstone event for its members. Such an event, similar to the *Managing Conflict 4.0* conference, would be for the purpose of learning and networking amongst high profile conflict resolution professionals.

In order to make the organization sustainable, it was suggested that an existing conflict resolution institution, e.g. CPR or ICC, might choose to “step out in front” as a leader in this area and provide the required seed money, although a discussion regarding which existing organization would be willing and able to do this has yet to be had. Other potential revenue sources discussed were membership fees and training services. In-kind assistance in the form of informational resources (including representative success stories/strategies/anecdotes) that would give purpose and definition to the organization could be provided by corporate role models (e.g. SAP and Monsanto).

B. Big Idea #2: Create Thought Leadership Around Bridging “Silos” Within Organizations and Distinct Corporate Functions to Promote Broad Ownership of Relationship-Based Processes (Facilitator: Wolf von Kumberg)

The idea here involved creating a cross-functional dispute management team within an organization comprised of members from legal, HR, line business, compliance, and finance. This internal dispute management team would ideally be “owned” by the Board of Directors and would report directly to the Board and/or the CEO. It was envisaged that the team would enunciate the organization’s core values and would largely handle two

distinct types of disputes: the organization's *internal* and *external* disputes.² Accordingly, participants proposed that the team have two tiers:

(1) *Internal tier*—for disputes within the organization—likely to be led by HR; and

(2) *External tier*—for disputes between the organization and other individuals or organization—likely to be led by a newly created role of a Chief Dispute Resolution Office (CDR Officer) or an existing role (e.g. General Counsel or Chief Financial Officer).

In order for the cross-functional dispute management team to be sustainable and engrained in the organization, the group agreed that it needs to have an internal “champion” (starting with the General Counsel) and needs to be a part of the organization's corporate governance structure.

The next issue the participants addressed was how to set the team in motion. The consensus was to undertake a survey (perhaps of either General Counsels or CEOs/CFOs) to determine how many organizations currently have cross-functional dispute resolution teams. In addition to eliciting information from the respondents, it was also considered that the survey might serve to educate them as to what a cross-functional dispute resolution team entails and what it can offer an organization. Existing ADR organizations, like the CPR Institute or the Straus Institute, were viewed as the most appropriate bodies to conduct the survey. In summarizing the group effort, facilitator Wolf von Kumberg emphasized the group's strong support for the survey as a fairly simple task to undertake—in other words, the “low hanging fruit.”

It was less clear what might be done in the wake of the survey. The participants agreed, however, that it was critical to promote appreciation of the benefits of a cross-functional dispute resolution team to encourage use of these teams by other organizations. To this end, it was suggested that an association be created for organizations that have cross-functional dispute resolution teams in place, as well as for organizations interested in creating such a team. An annual conference might be held for the purpose of bringing together executive team representatives (CEOs, General Counsels and/or HR representatives). Participants wrestled over whether the conference would be organized on an industry-by-industry basis or across

2. The authors note that the group discussion did not address the type, size, or volume of disputes that would be handled by the cross-functional dispute management team. Rather, they simply made the distinction between internal and external disputes. In a practical context, careful consideration will need to be given to the nature of the disputes that will be covered by such an internal program.

industries; the general consensus was that initially it would be best for the conference to be industry-specific.³

C. *Big Idea #3: Active Management of Conflict in Relationships*⁴
(Facilitator: Nancy Vanderlip)

This idea aims to address conflict “upstream,” by looking at active relational conflict management rather than traditional conflict resolution. The participants for this group divided this concept into four clear and actionable proposals:

(1) Training in Managing /Preventing Conflict: the participants in this group acknowledged that there are many exceptional conflict-based training programs in companies and universities. The proposal here therefore is to collect these training programs (from their various sources) and make them available on one website. Where there may be deficiencies or “gaps” in training programs, training materials and programs would be developed to fill the void. For example, training programs on conflict prevention and how to identify common issues (in the case of conflict across different cultures and countries and diversity or merger issues). Such training would include the identification of where these conflicts typically arise, and would provide trainees with the tools required to address them, e.g. many companies can benefit from identifying and dealing with structural conflicts and distinguishing them from interpersonal conflicts. Training materials would also provide examples of early management processes and programs in place (e.g. Monsanto and SAP) that allow other organizations to deal with these conflicts early on and systemically (as part of the organizational culture).

(2) Enhance a Culture of Ownership: organizational culture was recognized as a “big part of making this work.” Participants established that organizations should strive to create a culture where conflicts get resolved rather than “festering” and “blowing up.” There was an understanding that organizations may need help developing this culture (with expert consultants) and that, once determined, the culture should become part of the HR strategy. As an example, Nancy stressed the importance of culture in M&A work, where a culture assessment is conducted as part of the due

3. The authors note that it might be a good idea to combine Big Idea 2 with Big Idea 1 regarding the annual conference by using the Global Roundtable for Conflict Management to organize those conferences for cross-functional dispute resolution teams.

4. This idea was inspired in part by Tom Stipanowich’s *Managing Conflict 4.0* conference presentation, “Managing Relational Conflict in Real Time.” Some of the same concepts were presented in greater detail in Thomas J. Stipanowich, *The International Evolution of Mediation: A Call for Dialogue and Deliberation*, 46 VICTORIA U. WELLINGTON L. REV. 1191, 1233-43 (2015), <http://ssrn.com/abstract=2712457>.

diligence process when looking to acquire a target company. The culture of the target company is considered for the acquisition integration process and is critical to the success of the acquisition.

(3) Creation of a New Role – Conflict Prevention Officer (CPO): Nancy explained that the ideas on this point closely correlated with the ideas relating to the previous idea on cross-functional dispute resolution teams in organizations.

(4) Corporate Law Firm Selection (including, conflict management education, training): This idea recognized the role of outside counsel in assisting in conflict management and prevention. Participants identified that there is potential to create incentives for law firms that are aligned with corporate objectives (e.g. early settlement). However, another idea generated was for in-house counsel to include ADR training as part of its inquiry in the law firm selection process. Nancy drew the parallel that this approach is analogous to the initiative taken when diversity became an important corporate objective. In that case, in-house counsel required their external law firms to disclose and demonstrate their diversity. Similarly, in the context of dispute resolution, law firms should be asked, “What is the ADR training/experience of your team?” Nancy shared her “light bulb” moment in relation to this idea—although she had selected so many outside counsel, she had never asked them about their ADR training. Despite knowing that 99% of the litigated cases settle and that she “often drives them in that direction,” she had only ever asked law firms about their trial experience and their win/loss record.

It was proposed that the CPR Institute develop what the ADR criteria for law firms might look like, including, for example, questions such as, “How many of your lawyers have a certificate from the Straus Institute? How many of your lawyers have another type of conflict management training or education? How many mediations have your lawyers done?” The CPR Institute could then provide these criteria as a valuable resource to its members. From here, it was envisaged that a presentation could be given at the annual meeting of the Association for Corporate Counsel and the criteria could be distributed through the Association, perhaps spurring global development.

D. Big Idea #4: Promote a “Failure-Driven” Culture (When It Comes to Effective Conflict Management, Calculated Risk-Taking Will Be Rewarded) (Facilitator: Steve Niparko)

Participants understood their “big idea” to be that “fear of failure should not be an impediment to engagement” when it comes to the corporate culture around managing and resolving conflict. However, there was a concern that this “failure-driven” terminology might prevent acceptance of the idea. Facilitator Steve Niparko joked that no organization would say, “We have a failure-driven culture, buy our shares!” Accordingly, the group tried to move away from the negative language of “failure” (e.g. “thoughtful/knowledgeable failure is okay”) to a more positive concept (e.g. “calculated risk-taking/innovation will be rewarded”) that would apply when evaluating the effectiveness of efforts to manage conflict. Focusing on innovation, instead of failure, also means acknowledging that innovation is seldom achieved as a “hole in one” but generally as a process of many incomplete steps. The more dynamic and complex companies are, the more they need to encourage those innovative processes to be able to survive in an ever-changing market environment.

In this realm, the sense of the group was that what is required is a change in culture and total acceptance from the top-down and the bottom-up (including the CEO, executive team and the Board). It was recommended that the process of implementing a change of culture be “non-lawyered,” meaning that lawyers would be involved (as they have much to add because of their knowledge and understanding of dispute resolution processes) but would not control or dominate the process.

The group stressed that “regular” and “substantive” communication, emphasizing the practical impact of the culture on individual action (rather than mere theoretical constructs) would be critical. Education and training would be required to implement the change in culture; external consultants and resources might provide guidance on how best to proceed.

The group considered how to create collaboration in this new culture in which calculated risk-taking is rewarded. Some participants suggested that collaboration could be incentivized; employees might be given a bonus if they were brave in coming up with an innovative idea, even if it failed. However, there was some dispute as to whether this would work and further thought needed to be given to this component.

Finally, the participants discussed that there should be an assessment of the results, to determine if the new culture is “working” in the organization. The results should be measured and subject to organizational performance metrics (including the costs of the program). There should also be an understanding of the learning in the process and whether conflict has been eliminated, or at least mitigated. Moreover, public corporations and other

organizations that already implement risk controls might embed these concepts in approaching “innovative risk-taking” in conflict management.

E. Big Idea #5: Online Dispute Resolution (Facilitator: Véronique Fraser)

Initially, the participants in this group had to decide whether they were trying to: (1) create a new organization for online dispute resolution; or (2) improve existing online dispute resolution processes; the answer was “a bit of both.” Participants agreed at the outset, however, that they needed to see and assess what is happening in the online dispute resolution space before drawing firm conclusions.

Some participants envisaged that online dispute resolution could serve as a “preparatory tool.” Based on an initial inventory in which parties would be asked a series of questions relating to the particulars of the dispute (parties’ needs, the type of dispute, language and cultural elements, needs in a neutral), the software (by means of appropriate algorithms) would either fashion an appropriate dispute resolution process for the parties or direct them to an appropriate mediator. Human “backups” might be furnished.

Another possibility identified for online dispute resolution, was to create a panel of neutrals (perhaps between five and thirty neutrals) to assess a case and its possible outcomes—a type of “community court” or “online jury.” In such a process, the parties could have tailor-made online dispute resolution processes, in which witnesses could provide their testimony by video, or in written form. The group was clear not to limit the online methods available to parties.

Participants expressed interest in the concept of 3-D or virtual software, along the lines of online gaming, enabling parties to experience the feel of an actual human interaction. They posited the development of popular apps, along the lines of Tinder, in which parties could identify appropriate mediators based on various factors including location. There was also discussion of further evolution of available software (like Picture It Settled[®], the brainchild of the conference’s own Don Philbin) to predict negotiation outcomes and of Functional Magnetic Resonance Imaging (fMRI) technology and facial expression recognition technology which could detect micro-movements in parties’ faces to determine what they are really thinking and feeling.

The group concurred that such evolution would hinge on cross-disciplinary research involving lawyers, computer scientists and psychologists as well as the financial support of “big players” perhaps such as PayPal or Facebook.

F. *Big Idea #6: Train Relational Facilitators to Move Conflict Management from a "Blame" to a "Group" Culture (Facilitator: Debra Gerardi)*

Group discussion began with the meanings of terms such as *relational*, *facilitator*, *blame*, and *culture*. It was suggested, for example, that some might consider the term "relational" to be "too inaccessible," and terms such as "holistic" or "group dynamic" might be more appropriate. There was also the question of whether the concept of "blame" was too narrow, and whether terms, such as "ownership" and "accountability" would be more relevant. Positive language and the art of reframing are core abilities of mediators and should become mandatory for leadership over the next years. Without changing the language, a group cannot change its culture.

In addition, there was also debate about whether the facilitator would be someone "within the group" (in-house) who would have a sense of the context but did not have a stake in the outcome. The acknowledged benefit of an in-group facilitator is that they would know and recognize the culture of the system and reflect it back to the group. Alternatively, an "out-of-group" (external) facilitator would offer complete neutrality.

The participants agreed that the purpose of facilitators would be to shift the culture towards an interdependence of groups rather than a "me vs. you" attitude. In order to do this, facilitators would need to be trained to understand the behavior of "blame" and why it exists (including reasons such as relief of tension). Training for these facilitators would ideally be experiential and demonstration/simulation based. The participants suggested the potential use of improvisation as a basis for these trainings.

Participants decided that these facilitators would need to adopt integrative approaches to create interdependence, perhaps incorporating the use of positive psychology and pro-social techniques during the facilitations. Additionally, neuroscience-based techniques of inclusiveness would also be employed to foster appropriate language and an approach that creates trust between the parties.

Ideally, facilitators would amplify the preferred culture by the way in which they approach their work. The organization could itself highlight the value of the work done by the facilitators by creating a concept of "facilitator/mediator of the week."

Finally, the group posited that facilitators would incorporate a sense of play and humor in their work to create inclusivity and to create a space in which they can look and laugh at the culture rather than cause people to be threatened and feel they need to defend it. As facilitator Debra Girardi observed, "we laugh at what we no longer fear."

VI. REFLECTIONS AND THE FUTURE: MANAGING CONFLICT 5.0?

As a capstone for the presentations and discussions comprising *Managing Conflict 4.0*, the Community of Thinkers Workshop offered participants an opportunity to briefly survey the changing landscape of conflict management and take selective “deep dives” to explore various paths for future evolution. If nothing else, the insights gleaned from Workshop exercises may impact the current practices and perspectives of the participants and open minds to emerging opportunities. As game theory taught us its “tit for tat” solutions to the prisoner’s dilemma, changing a competitive system starts with introducing cooperative moves. Repeated cooperative moves can change the most competitive systems over time, just like the waves change the coastline over time. *Managing Conflict 4.0* therefore encourages us to apply the “big ideas” every day again and again until *Managing Conflict 5.0* emerges, where cooperative conflict management systems and cooperative innovative multidisciplinary working cultures have evolved in the majority of companies and organizations.

List of Participants
Managing Conflict 4.0: Community of Thinkers Workshop
Tuesday, November 10, 2015
Pepperdine University in Malibu, California

Peter Benner, Independent Dispute Resolution Practitioner in Hartford, Connecticut

Jürgen Briem, Head of Conflict Management Services and Head of the Mediator Pool at SAP SE in Walldorf, Germany and Co-founder of the Round Table for Companies in Germany for Mediation and Conflict Management

David H. Burt, member of the CPR Institute Executive Advisory Committee and Independent Neutral in Philadelphia, Pennsylvania

Helmut Buss, Chief Ombuds of the International Committee of the Red Cross (ICRC) in Geneva, Switzerland

John DeGroot, Independent Mediator and Arbitrator in Dallas, Texas

Prof. Dr. Malik R. Dahlan, Principal of the Institution Quraysh for Law and Policy and visiting Professor at the Energy and Natural Resources Law Institute in London, England

Dr. Veronique Fraser, Professor at the Law Faculty of the University of Sherbrooke in Quebec, Canada

Debra Gerardi, Healthcare Conflict Engagement Specialist and Consultant in Half Moon Bay, California

Noah J. Hanft, President and CEO of the International Institute for Conflict Prevention and Resolution in New York City, New York

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Dr. Alexander Insam, Partner of KPMG and KPMG Law Germany and Member of KPMG Germany's Chief Human Resources Officer (CHRO) Services Leadership Team in Frankfurt, Germany

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Don Philbin, Attorney-Mediator and President of Picture It Settled[®] in San Antonio, Texas

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Nancy Vanderlip, Independent Attorney and Mediator in Orange County, Los Angeles and a founding Co-chair of the Council of Distinguished Advisors for the Straus Institute for Dispute Resolution at the Pepperdine University School of Law

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Wolf von Kumberg, Member of ArbDB, the Arbitration, Mediation and Dispute Board Chambers in London, England

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Doroteia Mota, Brazil

Estefania Paz, Bolivia

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